IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 475 OF 2005

SHRI KESHAV PUTU GAUNTHANKAR AND 3 ORS., ...Petitioners

Versus

SHRI FOSSO VASU NAIK GAUNTHANKAR AND 2 ORS., ...Respondents

Mr. G. M. Kudchadkar, Counselfor the Petitioners.

Coram:- D. D. SINHA, J.

Date:- 15th December, 2005

P.C.

Heard Shri Kudchadkar, the learned Counsel for the petitioners. The Writ Petition is directed against the Order dated 01.12.2005, whereby the petitioner's application for recalling of Order dated 10.11.2005 and grant of adjournment came to be rejected in view of the scheme of the provisions of Order XVII Rule 1 of the Code of Civil Procedure.

The learned Counsel for the petitioner states that in the instant case though the petitioner had availed of three adjournments, as contemplated under proviso to Order XVII, Rule 1, however, could not produce the important witness of the defendant before the evidence of the parties was closed by Order dated 10.11.2005. It is, therefore contended, that the application was made to recall the Order dated 10.11.2005 and also prayed in the said application for grant of permission to examine this witness. It is contended that if there is a legitimate cause and sufficient reason, the Trial Court under Section 151 of the Code of Civil Procedure, was empowered to recall the Order and should have granted time to the present petitioner, original defendant to produce his witness which was necessary to be examined in the case. It is contended that the rejection of

application of the petitioner by the impugned Order by the Trial Court, is an Order which is unsustainable in law.

I have considered the contentions canvassed by the learned Counsel for the petitioner and perused the impugned order. The perusal of the impugned order shows that ample opportunities were given to the petitioner and the adjournments which legitimately could be granted under the scheme of Proviso of Order 17 Rule 1 of Civil Procedure Code, were also granted. The order impugned further demonstrates that either on 10.11.2005, when the Order is passed by the Court closing the evidence of the parties or prior to that date, no written application was submitted by the petitioner expressing his desire to examine his witness.

In absence therefore, I see no reason to interfere with the Order dated 10.11.2005, passed by the Trial Court closing the evidence of the parties particularly when there was no grievance made at the relevant time by the petitioner. If that is so, merely because under Section 151 of the C.P.C., Civil Court has the power to consider these aspects that does not mean that the Court is required to exercise such power when the circumstances do not warrant such exercise.

In view of these facts, petition suffers from lack of merit. Petition dismissed.

D. D. SINHA, J.

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